

Via email

May 21, 2013

Laura Wankel
Vice President of Student Affairs
l.wankel@neu.edu

Ralph Martin
Senior Vice President and General Counsel
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Re: Concerns about disciplinary process against Students for Justice in Palestine

Dear Ms. Wankel and Mr. Martin:

We write to express strong objections to Northeastern University's discipline of the Students for Justice in Palestine (SJP) group in connection with the group's staged walkout of a lecture by Israeli soldiers. We hope to discuss these concerns in an in-person meeting. Until that time, the following letter details our objections.

As you are aware, we contacted you both on May 3rd by letter to express alarm that by disciplining students for free speech activity Northeastern would violate its commitment to protecting free speech, and potentially violate its obligations under the Massachusetts Civil Rights Act, and Title VI of the Civil Rights Act. We received no response. Now, university officials have unreasonably sanctioned SJP for an alleged violation of the Campus Activities Demonstration Policy, confirming our fears regarding the improper and discriminatory nature of the discipline process.

1) The decision that SJP violated Campus Activities Demonstration Policy is contrary to the facts.

The determination letter notifies SJP that it violated the Campus Activities Demonstrations Policy by failing to properly register the event one week in advance.¹ This reasoning ignores the fact that the Campus Activities Office knew about the event in advance,

¹ The determination letter explains, "While Jace, your Program Manager, became aware of your organization's intention to demonstrate at the [Huskies for Israel] HFI event, your organization failed to register the demonstration with our office at least one week in advance, as Campus Activities' Demonstration Policy requires."

and authorized SJP to proceed subject to certain restrictions.² SJP followed the Office's instructions, as confirmed by the finding of "not responsible" as to the first charge ("Failure to comply with reasonable directions of Program Manager").

Despite ample opportunity, Jace, the program manager, did not say that what SJP had planned was a "demonstration" which required pre-registration. His confirmation via email constitutes authorization for SJP to have done exactly what it did. In other words, the conversation and ensuing email confirmation were notice that SJP's action was authorized. Had Jace said anything to suggest that further permission was needed, SJP would have requested this permission on an emergency, short-term basis, as other groups have done (for example, Huskies for Israel did this to protest an SJP event in 2010.)

The decision should be overturned for this reason alone. An agent of the university authorized SJP to conduct the protest, and the university cannot now punish the group for carrying out what the university authorized the group to do.

2) The disciplinary process, and now the appeals process, lacks basic requirements of procedural fairness.

This disciplinary process and now the appeal process, while it has a direct and potentially detrimental effect on students and free expression, appears nowhere to be described in the handbook or to proceed according to known rules. What notice is the university required to give SJP of the charges against them? What rights does SJP have to defend itself and confront its accusers? What sanctions could result from an adverse determination? What should they expect from the appeals process? None of this has been made clear to SJP despite numerous attempts to clarify the process and their rights. Fundamental notions of procedural fairness require notice of the charges, and notice of the process by which one will be judged.

Without knowing what procedural guidelines apply, we can nonetheless identify the following serious procedural deficiencies:

² The determination letter states, "Campus Activities became aware that your organization was planning to demonstrate at a Huskies for Israel (HFI) event occurring on April 8, 2013. When Campus Activities learned of these plans, your Program Manager, Jace, reached out to request that your organization not bring signs and not create a vocal disruption at the event, in accordance with Campus Activities' Demonstration Policy." During the hearing on April 26th, Tala Borno further explained to Steph Pierce who conducted the hearing for the Office of Campus Activities that Program Manager Jace told her over the phone at the time he placed restrictions on the event that SJP could proceed provided they did not have signs and did not verbally disrupt the event. Tala also explained they were not made aware of the registration requirement. *A full copy of the email from Jace Kirschner to SJP Chair Tala Borno is attached.*

- The hearing notice generally identified the charge “Violation of University Demonstration Policy” without citing what aspect of that policy was allegedly violated. The charge of “failed to register” was not made until the hearing, and thus SJP could not properly prepare to respond.
- SJP was not permitted to see the complaints made against them. The university first said there were no incident reports, and then once it was clarified that incident reports did in fact exist, SJP was not provided an opportunity to review them. Without opportunity to review, much less confront the allegations against them, SJP could not properly respond.
- The university did not inform SJP what procedure was being used to handle the alleged violations, nor the procedures that govern the appeal they were told they could take. This information was absent from the hearing notice, and further communication with the Campus Activities office also failed to clarify for the students what procedures apply, despite several attempts to clarify. (The Student Activities Handbook informs, “Violation of the policies outline [sic] in this handbook as well as any university policy, rule or regulation may be a breach of the Code of Student Conduct. Violations of any of these policies will be handled in accordance with the appropriate University procedure.”) Thus SJP could not, and still cannot ensure their rights are being respected without knowing which procedure, if any, applies.
- One unfortunate result of the absence of written procedural rules is that SJP learned two days before the deadline that it would be required to explain its grounds for appeal, making it very difficult for the group to formulate its appeal in such a short time.

We understand that the Student Activities office characterized the disciplinary process as “educational” rather than punitive, and this may be the university’s reason for not providing procedural guidelines or proper notice. But the punitive nature of the proceedings is evident from the fact that the Campus Activities office has applied the sanction of administrative probation. Administrative probation is not educational, nor rehabilitative. It merely threatens SJP that their existence as a student group is on thin ice, and the privilege to exist will be taken away should any policy violations occur, no matter how minor. Given the heightened scrutiny with which campus policies have been applied against SJP in the past and in the current disciplinary process, it is clear that SJP is at risk of indefinite suspension if it forgets to dot an “i.”

Furthermore, the Campus Activities Demonstration Policy warns that “Students who violate these regulations will be subject to disciplinary action; violators also jeopardize their right to remain in the Northeastern community.” Thus expulsion of individual students appears to be on the table. Given the threat of indefinite suspension of SJP as a group and expulsion of individual members, the “informal” nature with which the disciplinary process has proceeded must be corrected.

3) The application of discipline in this case follows a pattern of apparent discriminatory treatment based on political viewpoint, and possibly based on race and religion.

Discriminatory treatment that restricts SJP’s political expression based on its message in favor of Palestinian rights runs contrary to Northeastern’s own stated policy in favor of free expression.³ SJP is aware of several patterns of administrative scrutiny (and non-responsiveness when SJP’s rights and safety is concerned) that appear to be discriminatory.

First, it appears Northeastern is applying facially neutral rules with heightened scrutiny against SJP, based on the content of its message. Given that the discipline in this case is contrary to the facts (faulting the students for failure to “register” the protest when in fact the university authorized it), the reason given for discipline appears to be pretextual. This follows a pattern of applying a heightened and unforgiving standard of procedural compliance to SJP. On numerous occasions, SJP has been notified that their events cannot proceed because of minor procedural mistakes, which appear to be merely a pretext for restricting the content of SJP’s message.

For example, SJP’s mock checkpoint protest scheduled for March 12, 2013 was cancelled the day prior for failure to provide all necessary information to the administration. SJP accepts responsibility for this oversight but questions whether other groups have been similarly punished for minor procedural errors. It appears that there is special scrutiny for SJP because of its political message. In another example, SJP was notified that it was deauthorized as a student group for failure to sign a form, without warning, during the first week of January 2013. All that was necessary was to contact SJP and ask them to sign the form.

The most recent example of discriminatory scrutiny against SJP relates to the walk-out protest at issue. The Campus Activities Office cancelled SJP’s event with Dr. Abu Sitta,

³ Northeastern’s Student Handbook states: “It is recognized that all members of an academic community...have a right to express their views publicly on any issue; however, the University insists that all such expressions be peaceful and orderly and be conducted in a manner consistent with the Code and University policies and in such a way that University business shall not be unduly disrupted...”

scheduled for the night after the walkout, on the grounds that SJP failed to have the speaker sign the required form. But it is common practice for student groups hosting speakers to have the speaker sign the form when he or she arrives on campus, shortly before the event. The argument that Campus Activities cancelled the Dr. Abu Sitta lecture because SJP or the speaker failed to sign the form is thinly disguised. The circumstances and the university's own communications⁴ make it very clear that the event was cancelled to punish SJP for the political speech expressed at the Israeli Soldier speaking event the prior day.

Second, Northeastern failed to respond to a much more significant protest that disrupted an SJP event and failed to respond when SJP's faculty advisor was physically threatened.

In our previous communication dated May 3, 2013, we emphasized concerns about discriminatory treatment in connection with at least one similar "demonstration" organized by Huskies for Israel (HFI) of a Norman Finklestein lecture organized by SJP in 2010. Some aspects of that event are similar to this case in that the students protesting the SJP event did not have time to register their protest seven days in advance, and thus instead obtained an "emergency permit." The authorization obtained by HFI is similar to the authorization that SJP obtained in this matter. The HFI students' verbal disruption of the lecture went far beyond the bounds of what they were "authorized" to do with their emergency permit, and SJP made several complaints to the Student Activities office. In sharp contrast to the way SJP has been treated for a much more minor verbal protest, no discipline or sanction was applied to HFI. This points to content based discrimination against SJP, based on its political viewpoint.

Even more alarming is the lack of university response to an incident where a Northeastern faculty member and advisor to SJP was physically threatened. During an evening event in March 2012, Professor Shahid Alam gave a lecture at an SJP event.⁵ After the lecture, as Professor Alam hurried to catch the train, two students who also exited the lecture hall accosted and threatened him. Professor Alam returned to the SJP event as the students were cleaning up, visibly shaken and in fear for his safety. He brought this incident of harassment to the attention of the Office of Diversity. No action was taken as far as he is aware.

⁴ Jason Campbell-Foster, Director, Office of Campus Activities, notified SJP of the cancellation of the Dr. Abu Sitta event and of the investigation resulting from the walkout the night before in one message on April 9, 2013. His message seemed to draw a connection between the two events.

⁵ Students with opposing views secretly videotaped Professor Alam's lecture that evening and later posted doctored clips onto a hate website. This is relevant to show the risk to Professor Alam's personal safety, and the malice with which the students acted against him.

The lack of university response to the harassment of Professor Alam in connection with an SJP event, and the significant interruption of the Finklestein event sends the message to SJP that the university is not concerned about their physical safety, and not concerned about their speech rights if they are expressing a certain political viewpoint about Israel and Palestine.

Third, Northeastern appears to take excessive interest in the content of SJP events. The Campus Activities office is closely monitoring SJP's activities, in a manner that appears to be overly intrusive and contributes to chilling of their speech. For example, SJP's program manager has asked how different events "fit together" beyond merely inquiring about speakers and locations. He has repeatedly asked what SJP's plans are for advertising events, and what audience it intends to target. Is SJP required to share such information including strategic considerations regarding outreach and campaign planning? Does the Campus Activities office monitor all student groups in a similar fashion?

Fourth, Northeastern appears to discriminate against SJP in its insistence on a police presence at every SJP event. SJP is also concerned about the continued police presence at their events, despite the fact that they have repeatedly requested that the administration *not* send campus police to attend their events unless there is a real safety concern. Students prefer not to have police at scholarly lectures unless necessary because some attendees find it unnerving. Police presence is especially troublesome for attendees whose communities have been subjected to racial profiling and police misconduct.

The administration has expressed to SJP that the purpose of required police presence is to protect them. However, the lack of response to the physical threats against Professor Alam suggests that SJP's safety is not in fact a central concern. Based on SJP's record of peaceful and orderly events, there is no reason (except for racial and religious bias) to expect SJP's scholarly events to require police presence. On occasion, attendance at SJP events is sufficiently high to justify police who can facilitate traffic control. But in those cases, SJP welcomes campus police. The students interpret the university's insistence on police presence at all their events as either intimidation of their speech rights, or a result of the assumption that SJP members are prone to violence, or both. Is such a policy applied to other student groups, or is this a special policy for SJP because it promotes Palestinian rights, and because its membership is comprised of many Arab and Muslim students?

4) The Demonstration Policy that SJP allegedly violated is overly restrictive and vague, and thus invalid.

The rule requiring registration seven days in advance of a demonstration effectively bars both spontaneous and hastily organized protest actions, including peaceful demonstrations that respect others' speech rights and do not unreasonably interfere with campus activities. Many

“demonstrations” are spontaneous or planned on short notice because it is not possible to predict the many circumstances that may prompt protest. Of course Northeastern has a legitimate interest in receiving advance notice of a big event that will require an increased security presence. But a rule requiring seven days notice for any action that could conceivably be labeled a “demonstration” is much too broad.

Secondly, there is no definition of what constitutes a “demonstration”, and students have no ability to predict when the policy will apply to them or not. Does the policy prohibit any student from standing up and walking out of a lecture on the Northeastern Campus if he finds the lecture to be objectionable but failed to register the protest one week in advance? Such an overbroad and vague policy is a serious threat to the free exchange of ideas on campus. If Northeastern is to meet its commitment to free speech, it must clarify and narrow the application of the Demonstration Policy.

Conclusion

Administrative probation for “failure to register” a political protest stigmatizes and punishes SJP for engaging in political speech. The effect, whether intended or not, is to cast a cloud over SJP’s activity which chills its members’ speech and discourages their political activities. The stigma on the group and the threats to individual students is sure to discourage students from joining or being actively involved in the group. This is unacceptable at a university that purports to value peaceful political expression of diverse ideas as “fundamental to the democratic process” and commits to uphold “the rights of the Northeastern community to express their views and to protest actions or opinions.” (Student Organization Resource Guide, Demonstration Policy, page 46.)

We hope to have the opportunity to discuss these concerns in person and we request the opportunity to meet at your earliest convenience. Please contact David Kelston, at 617-367-1040, to arrange a meeting.

Sincerely,

David Kelston
Chair, National Lawyers Guild Massachusetts

Liz Jackson
Cooperating Counsel, Center for Constitutional Rights

Sarah Wunsch
Staff Attorney, ACLU Foundation of Massachusetts

cc: President Aoun, Office of the President, s.guszcza@neu.edu
Philomena Mantella, Senior Vice President for Enrollment Management and Student
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Vincent Lembo, Vice President and Senior Counsel, v.lembo@neu.edu

Attachment 1: Email from Jace Kirschner to Tala Borno, April 8, 2013, authorizing the SJP event.

Re: HFI Event This Evening

Northeastern/SJP x



Tala Borno

Apr 8



to Jace

Dear Jace,

Thank you for your concern, I assure you SJP members will behave as they always have thus far, and as such there will be no need for concern. Just in case, I have shared this email with our members.

Sincerely,

Tala

On Apr 8, 2013, at 3:20 PM, "Kirschner, Jace" <J.Kirschner@neu.edu> wrote:

Hi Tala

As per our conversation earlier, I understand that Students for Justice in Palestine is planning a silent, peaceful walkout of the Huskies for Israel event this evening. I would like to remind you that we expect all of our student organizations to conduct themselves with respect and decorum. Therefore, please encourage your members to be mindful of the policies that are outlined in the student code of conduct and the student organization handbook. Please instruct your members to not bring signs and discourage vocal disruption. We ask that you offer your fellow students the same respect that you would like them to give one of your events.

If you have any questions, please let me know.

Thanks very much,
Jace

Jace Kirschner
Assistant Director of Campus Activities
Coordinator of LGBTQA Programs & Services
Pronouns: He, Him, His

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It's time for Rainbow Graduation: *Honoring our Graduates, Celebrating our Community!*
northeastern.edu/lgbtqa

"We lift as we climb." - Mary Church Terrell